

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIAN M. PURICELLI et al. : CIVIL ACTION  
v. :  
FEATHER HOUSTON et al. : 99-CV-2982

**MEMORANDUM & ORDER**

**J. M. KELLY, J.**

**OCTOBER, 1999**

Presently before the Court is Defendant Feather Houston's ("Houston") Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). For the following reasons, Defendant's motion is granted.

**I. BACKGROUND**

In this action, the Plaintiffs, Brian Puricelli ("Puricelli"), Rhonda Ledbetter ("Ledbetter"), Daniel Borochaner ("Daniel") and Rebecca Borochaner ("Rebecca"), sued, among others, Feather Houston, the Secretary of the Pennsylvania Department of Public Welfare. <sup>1</sup>They raise a facial challenge to the constitutionality of the Pennsylvania Child Protective Services Law, 23 Pa. Cons. Stat. Ann. §§ 6301-6384 (1991) ("CPSL"), and request equitable and declaratory relief.

According to the Complaint, in 1998, Andrew Borochaner ("Borochaner"), Ledbetter's former husband and then natural father of Daniel and Rebecca, accused Puricelli, Ledbetter's

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<sup>1</sup>Of the four counts that the Plaintiffs raise in their Complaint, Defendant Houston is charged only in Count I. Because the present motion is on behalf of Houston only, the Court will limit its discussion to Count I of the Complaint.

current husband, of child abuse. <sup>2</sup>The allegation was investigated by the Bucks County Children and Youth Services Agency (“CYS”) and determined to be “unfounded.” Nonetheless, Puricelli’s name was placed on the statewide central register of suspected child abusers. Then, on approximately May 23, 1999, the day after a telephoned dispute between Borochaner and Puricelli over noncourt scheduled visitation, Borochaner again accused Puricelli of child abuse. CYS investigated the allegation and determined it to be “unfounded.” Despite this finding, however, Puricelli’s name was again placed on the statewide central register. <sup>3</sup>

Following the May incident, Puricelli alleges he suffered emotional and financial harm by being labeled a “predator.” The Plaintiffs also claim that during the investigation of the alleged incident, CYS violated their right to privacy by invading their lives and their family activities, and that they interfered with Ledbetter and Puricelli’s liberty interest in raising the children. Specifically, Puricelli challenges the CPSL as overly broad, arguing that the investigative authority granted by the statute unconstitutionally interferes with his familial and parental rights. Further, Puricelli argues the law is unconstitutional because it allowed him to be placed on the statewide central register and fail to afford him a means by which to remove his name. Accordingly, the Plaintiffs filed suit in this court seeking declaratory and injunctive relief.

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<sup>2</sup>The Court, as it must on a motion to dismiss, views the facts of this case in a light most favorable to the Plaintiff. See, e.g., Warth v. Seldin, 422 U.S. 490, 501 (1975); Tunnell v. Wiley, 514 F.2d 971, 975 n.6 (3d Cir. 1975).

<sup>3</sup>The parties inconsistently describe the result of the May 23, 1999 report of abuse. At various points, both parties state the report was determined to be “unfounded” and that it was “indicated.” This inconsistency is not relevant to deciding this motion, however, as the outcome is the same under either scenario.

## **II. STANDARDS OF REVIEW**

### **A. Rule 12(b)(1) Standard**

In considering whether to dismiss a complaint for lack of subject matter jurisdiction, the relevant inquiry is whether the claim “clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or... is wholly insubstantial and frivolous.” Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991); see McGrath v. Johnson, No. CIV. A. 98-6595, 1999 WL 744445, at \*3 (E.D. Pa. Sept. 24, 1999). When considering a motion to dismiss based on Rule 12(b)(1), the plaintiff bears the burden of proving that jurisdiction is proper. See Development Fin. Corp. v. Alpha Housing & Health Care, 54 F.3d 156, 158 (3d Cir. 1995); Mellon Bank (East) PSFS v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992). But, when such a motion alleges a lack of standing, as here, the court must construe the complaint in favor of the nonmoving party and accept all material allegations made in the complaint as true. See Warth, 422 U.S. at 501; McGrath, 1999 WL 744445, at \*3.

### **B. Rule 12(b)(6) Standard**

In considering whether to dismiss a complaint for failing to state a claim upon which relief can be granted, the court must consider only those facts alleged in the complaint and must accept those facts as true. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1983). Moreover, the complaint is viewed in the light most favorable to the plaintiff. See Tunnell, 514 F.2d at 975 n.6. In addition to these expansive parameters, the threshold a plaintiff must meet to satisfy pleading requirements is exceedingly low; a court may dismiss a complaint only if the plaintiff can prove no set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

### **III. DISCUSSION**

#### **A. Abstention**

First, Houston argues that this Court should abstain from hearing this case pursuant to the abstention doctrine articulated in Younger v. Harris, 401 U.S. 37 (1971), or, alternatively, Railroad Commission of Texas v. Pullman, 312 U.S. 496 (1941). Under Younger abstention, without regard to the constitutionality of the state law, a federal court is prohibited from staying or enjoining pending state proceedings, except under extraordinary circumstances. See Younger, 401 U.S. at 40-41. Pullman abstention requires a federal court to abstain where a state proceeding can obviate the need to reach a federal constitutional question, pending the outcome of the state proceeding. See Pullman, 312 U.S. at 501.

What both abstention doctrines require, however, is a pending state proceeding. Houston notes that it is unclear from the Complaint whether Puricelli has requested removal of his name from the statewide central register. Presumably, if such a request had been made, an abstention analysis would be appropriate here. As it stands, however, neither Houston nor this Court know whether there is a pending state proceeding, and in the absence of evidence of one, even a discussion of the propriety of abstention is inappropriate. Therefore, this Court will not abstain from hearing this case.

#### **B. Justiciable Case or Controversy**

Houston also argues that the Plaintiffs' Complaint should be dismissed because Puricelli lacks standing to bring a facial challenge to the CPSL and that such a challenge is not ripe for adjudication. In order to have a justiciable case or controversy, the plaintiff must have standing to raise the claim. To have standing, the plaintiff must meet the requirements of Article III of the

United States Constitution. See U.S. Const. Art. III, §2; Armstrong World Indus., Inc. v. Adams, 961 F.2d 405, 410 (3d Cir. 1992); McGrath, 1999 WL 744445, at \*4. The Article III requirements are satisfied when the plaintiff shows that: (1) he has suffered an actual or threatened injury; (2) the injury was caused by the allegedly illegal action of the defendant; and (3) the injury is subject to redress by a favorable judicial decision. See Schering Corp. v. Food & Drug Admin., 51 F.3d 390, 395 (3d Cir. 1995).

In this case, the Plaintiff has established each of these elements in a manner sufficient to survive a 12(b)(1) motion. First, Puricelli alleges that he suffered actual injury in the form of an unconstitutional interference with his marital and family rights, as guaranteed by the First and Fourteenth Amendments. Second, this injury is causally related to the CPSL. Houston inaccurately characterizes Puricelli's position as challenging only the constitutionality of the "substantial evidence" standard included within the CPSL. <sup>4</sup>She argues, therefore, that because the substantial evidence standard has not yet been applied to Puricelli, he does not have standing to challenge it. In reality, however, Puricelli challenges the entire law as overly broad and lacking in sufficient standards to protect innocent and falsely accused persons. His injury, he alleges, results from the lack of standards, creating the necessary causal connection for standing. Third and finally, Puricelli's injury is capable of redress by a favorable decision by this Court. Puricelli requests that the court declare the CPSL unconstitutional, enjoin its further application and award other appropriate relief; such relief would compensate Puricelli for his alleged injury. Accordingly, this Court finds that Puricelli has standing to raise a constitutional challenge to the

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<sup>4</sup>Under the CPSL, the Department of Public Welfare may expunge the record of an "indicated" report if it determines that the report of alleged abuse is not supported by "substantial evidence." See 23 Pa. Cons. Stat. Ann. §6341.

CPSL.

Another aspect of justiciability is that the case is ripe for adjudication. The ripeness doctrine serves the function of preventing federal courts from “entangling themselves in abstract disagreements” by avoiding premature adjudication of claims. Abbott Labs. v. Gardner, 387 U.S. 136, 148 (1967), overruled on other grounds, Califano v. Sanders, 430 U.S. 99, 105 (1977); see Philadelphia Fed’n of Teachers v. Ridge, 150 F.3d 319, 323 (3d Cir. 1998). Houston argues that Puricelli’s claim is not yet ripe because the substantive evidentiary standard has not been applied to him. Again, this argument relies on a mischaracterization of Puricelli’s Complaint. Puricelli challenges not only the substantive evidentiary standard, but the entire law too. The CPSL has twice been applied to Puricelli in that because of its provision authorizing the investigation of allegations of child abuse, he has twice been the subject of investigation and twice placed on the statewide central register of child abusers. Therefore, this Court denies Houston’s contention that this case is not ripe. Accordingly, the Court finds that Puricelli has presented a justiciable case or controversy.

**C. Claim Upon Which Relief Can Be Granted**

Houston argues additionally that the Court should dismiss Puricelli’s facial challenge to the CPSL pursuant to Rule 12(b)(6) because he fails to state a claim upon which relief can be granted. First, she alleges that there are no substantive due process rights at stake because Puricelli is neither the children’s natural father, stepfather nor their legal guardian.<sup>5</sup> The Court need not decide this issue, however, because Puricelli also alleges violations of his substantive

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<sup>5</sup>Puricelli and Ledbetter are married, but there is no evidence that Puricelli has formally adopted Daniel and Rebecca. It is on this basis that Houston argues that Puricelli has no fundamental parental rights as to Daniel and Rebecca that could have been violated by the CPSL.

due process rights to marital and familial privacy. Although they are not explicitly labeled as such, the Court discerns three ways in which Puricelli alleges his constitutional rights were violated. First, he alleges that during the investigation, he was forced to temporarily move from his marital home and avoid contact with his family, denying him of the companionship of his wife and stepchildren. Second, his name was placed on the statewide central register even though the reports of abuse were deemed to be “unfounded.” Third, because the allegations were “unfounded,” the CPSL provides no means by which he can have his name removed from the statewide central register. <sup>6</sup>

In the alternative, Houston argues that the CPSL is constitutional because any interference with Puricelli’s substantive due process rights is justified by the state’s interest in protecting children from alleged abuse. Puricelli does not dispute that the state has a right to investigate and report child abuse, but argues instead that the state’s right to do so under this statute is unconstitutionally broad. The Court will analyze the three allegations of constitutional inadequacy listed above in light of this argument.

Turning first to the challenge to the investigative authority granted by the CPSL, Puricelli claims that it deprived him of the fundamental right to familial companionship and privacy. See Croft v. Westmoreland County Children & Youth Servs., 103 F.3d 1123, 1125 (3d Cir. 1997) (recognizing constitutionally protected liberty interests parents have in companionship with children). The Third Circuit has held, however, that with regard to investigations of child abuse,

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<sup>6</sup> According to the Complaint, the CPSL does not provide a mechanism by which Puricelli could seek to have his name expunged from the statewide central register. Puricelli alleges that only those cases which are determined to be “indicated” are subject to review and possible expungement. The statute offers no remedy to those whose cases are determined to be “unfounded” but whose names are nonetheless placed on the statewide central register.

the constitutionally protected liberty interests that parents have in their children are not absolute. See Croft, 103 F.3d at 1125; Millerv. City of Philadelphia, 954 F.Supp. 1056, 1063 (E.D. Pa. 1997), aff'd, 174 F.3d 368 (1999); Callahan v. Lancaster-Lebanon Intermediate Unit 13, 880 F.Supp. 319, 329 (E.D. Pa. 1994). Indeed, “[t]he right to familial integrity... does not include a right to remain free from child abuse investigations.” Id.

To decide Puricelli’s challenge to the CPSL, the Court must balance his fundamental liberty interests with the compelling interest of the state in protecting children from abuse. See Croft, 103 F.3d at 1125. Puricelli alleges that the CPSL unconstitutionally interfered with his rights in that it allowed the investigation into the report of abuse to continue for sixty days, despite the fact that there was no evidence of wrongdoing and there was evidence that the allegation of abuse was false. See 23 Pa. Cons. Stat. Ann. § 6337(b). The state, however, has the right to investigate allegations of child abuse, and absent the time limit imposed by the statute, the only restraint on the state’s investigative power is reasonableness. See Picarellav. Terrizzi, 893 F.Supp. 1292, 1302 (M.D. Pa. 1995); Faulkner v. Reeves, Civ. A. No. 91-1880, 1992 WL 96286, at \*9 (E.D. Pa. Apr. 23, 1992); see also Wilkinson v. Russell, 182 F.3d 89, 104-05 (2d Cir. 1999). The Court does not find that sixty days is an unreasonable amount of time. Further, that there initially is no evidence of wrongdoing demands that the state fully investigate the allegation rather than spend less time investigating. This is the case also when there is evidence of a false allegation of abuse. Houston’s motion is accordingly granted on this issue.

Second, Puricelli argues the CPSL is facially unconstitutional because his name was twice placed on the statewide central register despite the fact that both allegations of abuse were determined to be “unfounded.” This argument fails, however, because the CPSL does not allow



for such a result on its face. Section 6337 dealing with the disposition of “unfounded” reports states:

When a report of suspected child abuse is determined by the appropriate child protective service to be an unfounded report, the information concerning that report of suspected child abuse shall be expunged from the pending complaint file within 12 months of the date the report was received by the department, and no other information other than that authorized by subsection (b), which shall not include any identifying information on any subject of the report, shall be retained by the department.

23 Pa. Cons. Stat. Ann. § 6337(a). Further, the CPSL states that only those reports of child abuse which are determined to be “founded” or “indicated” are to be included in the statewide central register. See id. § 6331(b) (establishing “[a] statewide central register of child abuse which shall consist of founded and indicated reports of child abuse”); id. § 6338(a) (“When a report of suspected child abuse is determined... to be a founded or an indicated report,... an appropriate entry shall be made in the Statewide central register....”). The Court concludes, therefore, that only those reports which are determined to be “founded” or “indicated” are to be entered into the statewide central register, and those reports which are deemed “unfounded” are to be expunged after a matter of time. That the instant case was not dealt with in that manner is not indicative of a facial flaw in the CPSL and Houston’s motion is accordingly granted as to this issue.

Third and finally, Puricelli challenges the CPSL claiming it provides no means by which he can have his name removed from the statewide central register. The statute provides only that “indicated” claims that are not supported by “substantial evidence” shall be removed. Puricelli is correct in his claim that the statute provides no means by which he can have his name removed from the statewide central register. This, however, is not a constitutional failure of the CPSL because this scenario is one that, when the statute is applied properly, is not supposed to happen.

The Court will not declare a statute facially flawed for failing to remedy a circumstance that it does not authorize. Houston's motion is accordingly granted as to this issue as well.

Therefore, the Court finds that Puricelli has failed to state a claim upon which relief may be granted with regard to his facial challenge to the constitutionality of the CPSL and Houston's motion to dismiss is granted.

#### **IV. CONCLUSION**

While Puricelli has standing to challenge the constitutionality of the CPSL, the Court finds his claim to be without merit and accordingly grants Houston's motion to dismiss for failure to state a claim upon which relief can be granted.

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**ORDER**

**AND NOW**, this day of October, 1999, in consideration of Defendant Houston's Motion to Dismiss (Doc. 8) and Plaintiff Puricelli's response thereto, it is ORDERED that the Motion to Dismiss is GRANTED. Accordingly, the case is dismissed as to Defendant Feather Houston.

BY THE COURT:

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JAMES MCGIRRKELLY, J.